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8 BIGBAND NETWORKS, INC., AMIR  
9 BASSAN-ESKENAZI, FREDERICK A. BALL,  
10 RAN OZ, LLOYD CARNEY, DEAN  
GILBERT, KENNETH A. GOLDMAN, GAL  
ISRAELY, BRUCE I. SACHS, ROBERT J.  
SACHS and GEOFFREY Y. YANG

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

15 BIKASH MOHAN MOHANTY, On Behalf of ) Case No. 4:07-CV-05101-SBA  
16 Himself and All Others Similarly Situated, )  
17 Plaintiff, )  
18 v. )  
19 BIGBAND NETWORKS, INC., AMIR )  
20 BASSAN-EZKENAZI, RAN OZ, FREDERICK )  
21 BALL, GAL ISRAELY, DEAN GILBERT, )  
22 KEN GOLDMAN, LLOYD CARNEY, BRUCE )  
23 SACHS, ROBERT SACHS, GEOFFREY )  
24 YANG, MORGAN STANLEY & CO., INC., ) Date: February 5, 2008  
MERRILL LYNCH, PIERCE, FENNER & ) Time: 1:00 P.M.  
SMITH, INC., JEFFERIES & CO., INC., ) Dept: Courtroom 3, 3rd Floor  
COWEN AND CO., INC., AND )  
THINKEQUITY PARTNERS LLC )  
Defendants. )  
BIGBAND DEFENDANTS' )  
RESPONSE TO MOTIONS FOR )  
CONSOLIDATION, )  
APPOINTMENT AS LEAD )  
PLAINTIFF, AND APPROVAL OF )  
SELECTION OF LEAD COUNSEL )  
Honorable Saundra B. Armstrong )

1	DENNIS KOESTERER, On Behalf of Himself and All Others Similarly Situated,	)	Case No. 3:07-CV-05168-MMC
2		)	
3	Plaintiff,	)	
4		)	
5	v.	)	
6		)	
7	BIGBAND NETWORKS, INC., AMIR BASSAN-EZKENAZI, FREDERICK A. BALL, RAN OZ, LLOYD CARNEY, DEAN GILBERT, KEN GOLDMAN, GAL ISRAELY, BRUCH SACHS, ROBERT SACHS, and GEOFFREY YANG	)	
8		)	
9	Defendants.	)	
10		)	
11	ABRENA WINSTON, Individually and On Behalf of All Others Similarly Situated,	)	Case No. 3:07-CV-05327-JSW
12		)	
13	Plaintiff,	)	
14		)	
15	v.	)	
16		)	
17	BIGBAND NETWORKS, INC., AMIR BASSAN-EZKENAZI, RAN OZ, FREDERICK BALL, GAL ISRAELY, DEAN GILBERT, KEN GOLDMAN, LLOYD CARNEY, BRUCE SACHS, ROBERT SACHS, GEOFFREY YANG, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., MORGAN STANLEY & CO., INC., COWEN AND CO., JEFFERIES & CO., and THINKEQUITY PARTNERS LLC	)	
18		)	
19	Defendants.	)	
20		)	
21	DONALD SMITH, On Behalf of Himself and All Others Similarly Situated,	)	Case No. 3:07-CV-05361-SI
22		)	
23	Plaintiff,	)	
24		)	
25	v.	)	
26		)	
27	BIGBAND NETWORKS, INC., AMIR BASSAN-EZKENAZI, and FREDERICK A. BALL	)	
28		)	



1	JAMES WILTJER, On Behalf of Himself and All )	Case No. 3:08-CV-22-CRB
2	Others Similarly Situated, )	)
3	Plaintiff, )	)
4	v. )	)
5	BIGBAND NETWORKS, INC., AMIR )	)
6	BASSAN-ESKENAZI, FREDERICK A. BALL, )	)
7	RAN OZ, LLOYD CARNEY, DEAN GILBERT, )	)
8	KENNETH A. GOLDMAN, GAL ISRAELY, )	)
9	BRUCE I. SACHS, ROBERT J. SACHS, )	)
10	GEOFFREY Y. YANG, MORGAN STANLEY )	)
11	& CO. INCORPORATED, MERRILL LYNCH, )	)
12	PIERCE, FENNER & SMITH )	)
13	INCORPORATED, JEFFERIES & COMPANY, )	)
14	INC., COWEN AND COMPANY, LLC, )	)
15	THINKEQUITY PARTNERS LLC and DOES 1- )	)
16	25, inclusive, )	)
17	Defendants. )	)

13           The BigBand Defendants respond as follows to the (1) motion filed by Gwyn Jones for  
 14 an order consolidating the above-captioned matters, appointing her as lead plaintiff, and  
 15 approving her selection of co-lead counsel, and (2) the motion filed by the Sphera Fund for an  
 16 order consolidating the above-captioned matters, appointing the Sphera Fund as lead plaintiff,  
 17 and approving its selection of co-lead counsel.<sup>1</sup>

18 **I. INTRODUCTION**

19           The above-captioned matters are putative securities fraud class action lawsuits alleging  
 20 that the defendants made misrepresentations and/or omissions in connection with and following  
 21 BigBand's initial public offering. The first action, *Mohanty v. Bassan-Eskanazi et al.*, No. C 07-  
 22 5101-SBA (the "Mohanty Action"), was filed on October 3, 2007, and the other actions followed  
 23 over the subsequent weeks.

24           On November 21, 2007, the parties to each of the then-pending lawsuits submitted a  
 25 Stipulation and [Proposed] Order Regarding Consolidation and Scheduling in the first-filed

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27           <sup>1</sup> The BigBand Defendants are BigBand Networks, Inc. ("BigBand"), Amir Bassan-  
 28 Eskenazi, Ran Oz, Frederick Ball, Gal Israely, Dean Gilbert, Ken Goldman, Lloyd Carney,  
 Bruce Sachs, Robert Sachs, and Geoffrey Yang.

1 *Mohanty* Action, in which they agreed that the cases should be deemed related and consolidated.  
 2 *See Mohanty* Action, Docket No. 11.<sup>2</sup> The [Proposed] Order also provides that defendants need  
 3 not respond to any complaint until the court-appointed lead plaintiff files a consolidated  
 4 amended complaint.

5       On December 3, 2007, two alleged class members filed motions for appointment as lead  
 6 plaintiff. Gwyn Jones filed a motion seeking consolidation of the actions, appointment as lead  
 7 plaintiff, and approval of her selection of Hagens Berman Sobol Shapiro LLP and Kahn Gauthier  
 8 Swick, LLC as co-lead counsel. Separately, the Sphera Fund filed a motion seeking  
 9 consolidation of the actions, appointment of the Sphera Fund as lead plaintiff, and approval of  
 10 the Sphera Fund's selection of Glancy Binkow & Goldberg LLP and The Law Office of Jacob  
 11 Sabo as co-lead counsel. The motions are scheduled for hearing on February 5, 2008.

12       Also on December 3, 2007, the *Wiltjer* Action was filed in the Superior Court for the  
 13 County of San Francisco. On January 2, 2008, all defendants jointly removed the *Wiltjer* Action  
 14 to this Court and, the next day, the BigBand Defendants filed a Motion for Administrative Relief  
 15 in the *Mohanty* action to consider whether the *Wiltjer* Action should be related to the *Mohanty*  
 16 Action and the other earlier-filed actions. *Mohanty* Action, Docket No. 24.<sup>3</sup>

17       As explained below, the BigBand Defendants agree that these matters (including the  
 18 *Wiltjer* Action) should be consolidated into the first-filed *Mohanty* Action pending before the  
 19 Hon. Saundra B. Armstrong. The BigBand Defendants take no position, however, on the  
 20 appropriateness of the moving parties or their counsel for the positions of lead plaintiff and lead  
 21 counsel, respectively.

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 23  
 24

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25       <sup>2</sup> As explained below, *Wiltjer v. BigBand Networks, Inc., et al.*, Case No. 08-22-CRB (the  
 26 "Wiltjer Action"), was not filed until December 3, 2007 – the same day on which Ms. Jones and  
 the Sphera Fund filed their competing motions for appointment as lead plaintiff.

27       <sup>3</sup> Defendants Morgan Stanley & Co. Incorporated, Merrill Lynch, Pierce, Fenner & Smith  
 28 Incorporated, Jefferies & Company, Inc., Cowen and Company, LLC, and Thinkequity Partners  
 joined in the BigBand Defendants' motion on January 3, 2008. *Mohanty* Action, Docket No. 25.

1       **II. THE BIGBAND DEFENDANTS' RESPONSE TO THE JONES AND SPHERA**  
 2       **FUND MOTIONS**

3       **A. Consolidation**

4       The BigBand Defendants agree that the above-captioned matters should be consolidated  
 5       into a single action before Judge Armstrong. The consolidation order should specifically include  
 6       the *Wiltjer* action, which was filed (and removed to this Court) after Ms. Jones and the Sphera  
 7       fund filed their competing motions for appointment as lead plaintiff, and any other substantially  
 8       similar actions that may be filed later. *See, e.g., Mohanty Action, Docket No. 11 at 1* (joint  
 9       request among all parties that consolidation include subsequently-filed actions). The BigBand  
 10      Defendants understand that the plaintiff in the *Wiltjer* Action intends to file a motion to remand  
 11      the *Wiltjer* Action to state court.

12      **B. Lead Plaintiff**

13      The BigBand Defendants take no position regarding the appointment of either Gwyn  
 14      Jones or the Sphera Fund as lead plaintiff for the consolidated action. However, in taking no  
 15      position, the BigBand Defendants do not concede that these actions may properly be maintained  
 16      as a class action, and do not waive their right to challenge the standing of the appointed lead  
 17      plaintiff or the appointed lead plaintiff's ability to adequately represent the class. The BigBand  
 18      Defendants can take discovery at the appropriate time regarding the appointed lead plaintiff's  
 19      ability to adequately represent the Class. *See In re Chiron Corp. Sec. Litig.*, No. C-04-4293  
 20      VRW, 2007 WL 4249902, at \*13 (N.D. Cal. Nov. 30, 2007) ("The appointment of lead plaintiffs  
 21      occurring as it does in advance of class discovery, is not a final ruling on their appropriateness as  
 22      Class Representatives") (citation omitted); *In re Oxford Health Plans, Inc., Sec. Litig.*, 191  
 23      F.R.D. 369, 373 (S.D.N.Y. 2000) (same); *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 666 (C.D.  
 24      Cal. 2005) ("Evidence regarding the requirements of Rule 23 will, of course, be heard in full at  
 25      the class certification hearing. There is no need to require anything more than a preliminary  
 26      showing at this stage") (quoting *Gluck v. CellStar Corp.*, 976 F. Supp. 542, 546 (N.D. Tex.  
 27      1997)).

1           **C.        Lead Counsel**

2           The BigBand Defendants take no position regarding the approval of either Gwyn Jones'  
3 or the Sphera Fund's selection of co-lead counsel.

4           Dated: January 15, 2008

5           WILSON SONSINI GOODRICH & ROSATI  
6           Professional Corporation

7           By: /s/ Rodney G. Strickland, Jr.

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19           Amir Bassan-Eskanazi, Ran Oz, Frederick Ball,  
20           Gal Israely, Dean Gilbert, Ken Goldman, Lloyd  
21           Carney, Bruce Sachs, Robert Sachs and Geoffrey  
22           Yang*

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